

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

FEB 27 2018

JACOB JAY RIVERA,

:

PER


DEPUTY CLERK

Plaintiff

:

CIVIL ACTION NO. 3:13-1399

v.

:

JUDGE MANNION

P. A. DIEBERT,

:

Defendant

:

ORDER

Pending before the court is the report and recommendation of Magistrate Judge Susan E. Schwab which recommends that the plaintiff's complaint be dismissed for failure to prosecute. (Doc. 58). No objections have been filed to Judge Schwab's report.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

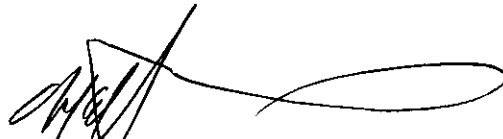
In this case, the record reflects that the last filing by the plaintiff was a motion for an extension of time and for court-appointed counsel on May 15, 2017. (Doc. 15). Thereafter, all mail sent to the plaintiff, including an order by the court to show cause why this action should not be dismissed for failure to prosecute, was returned as undeliverable. (Doc. 55, Doc. 59, Doc. 60). The court was informed that the plaintiff had been paroled, but did not provide a forwarding address. Thus, the plaintiff has had no contact with the court for over nine months and, contrary to the requirements of the Local Rules of Court, has failed to provide the court with a forwarding address.

In considering the factors set forth in Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863 (3d Cir. 1984), as the court must do in determining whether to dismiss a case as a sanction for a plaintiff's failure to prosecute, Judge Schwab determined that the factors weigh in favor of dismissal. This court has reviewed Judge Schwab's report in its entirety and finds no clear error of record. As such, Judge Schwab's report and recommendation will be adopted in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) the report and recommendation of Judge Schwab, (Doc. 58), is ADOPTED IN ITS ENTIRETY;**

- (2) the instant action is **DISMISSED WITH PREJUDICE**; and
- (3) the Clerk of Court is directed to **CLOSE THIS CASE**.



MALACHY E. MANNION
United States District Judge

Date: February 27, 2018

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